



Primer Briefing

“Brand Name or Equal” Purchase Descriptions



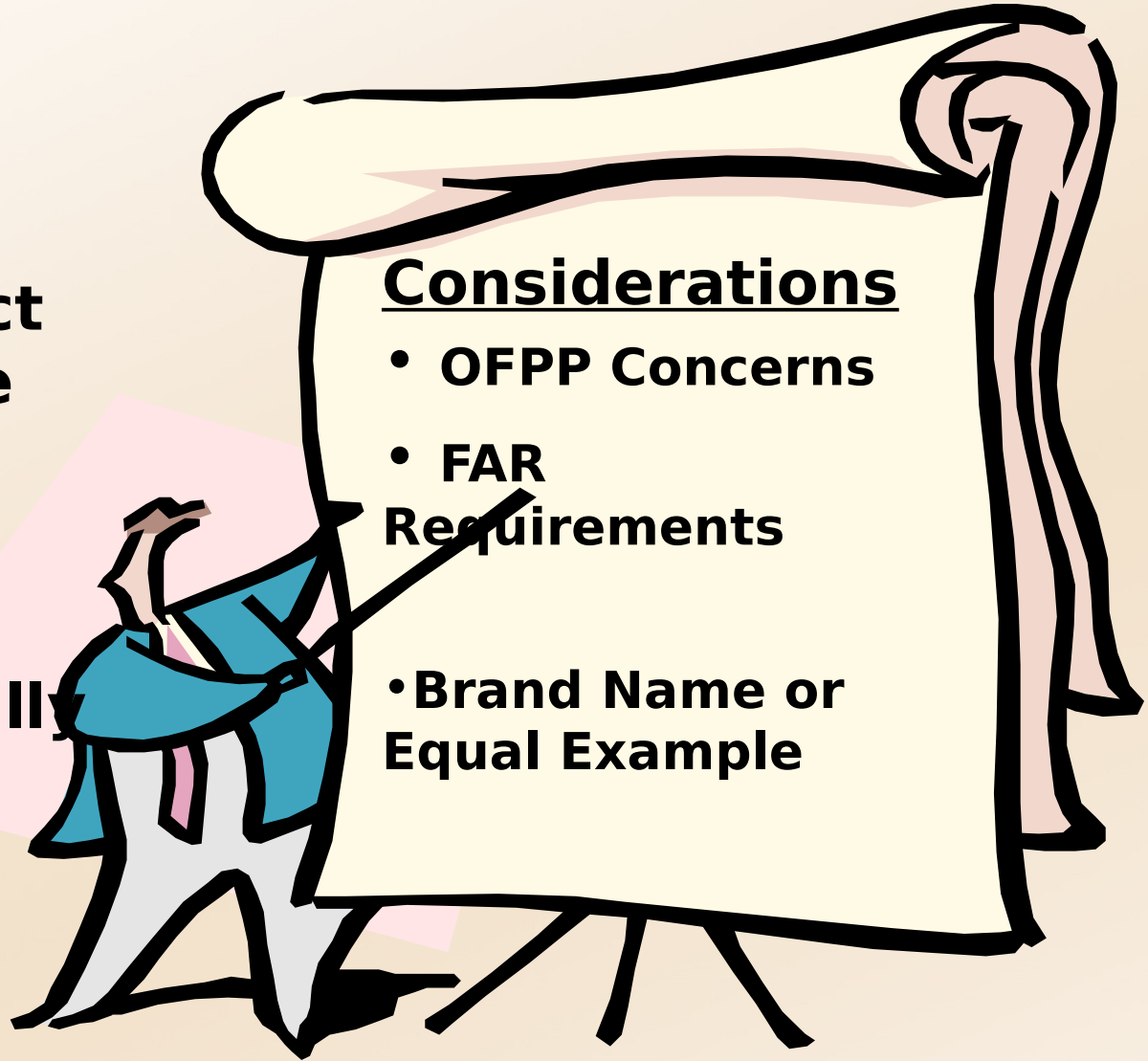
Definition and Considerations

Brand Name or Equal purchase descriptions:

- **Identify a product by its brand name and its model or part number**
- **Permit offers for products essentially equal to the specified brand name**

Considerations

- **OFPP Concerns**
- **FAR Requirements**
- **Brand Name or Equal Example**





OFPP Concerns

Use of Brand Name Only Specifications

- Use of “brand name only” specifications in agency solicitations may have increased significantly in recent years; examples:
 - Federal agencies have issued solicitations with specifications for brand name microprocessors that are associated with a single manufacturer
 - A federal agency issued an “RFQ” for approximately \$81 million in office supplies that were identified by a vendor number unique to one large office supply company
- Use of brand name only specifications limit competition and diminish the likelihood that the agency will purchase the best value product
- Add significant risk of severely limiting small business participation
- Specifications should emphasize the necessary physical, functional, and performance characteristics of a product, not brand names
- Agencies should encourage their acquisition professionals to limit the use of brand name only specifications and maximize competition

References: Office of Federal Procurement Policy Memorandum, April 11, 2005, Subject: Use of Brand Name Specifications
Office of Federal Procurement Policy Memorandum, April 17, 2006, Subject: Publication of Brand Name Justifications
http://www.whitehouse.gov/omb/procurement_index_memo/



Applicable FAR Requirements

- **FAR 11.104 - Use of Brand Name or Equal Purchase Descriptions**

- (a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.
- (b) Brand name or equal purchase descriptions **must include**, in addition to the brand name, *a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award.* Use brand name or equal descriptions when the salient characteristics are firm requirements.

- **FAR 11.107 - Solicitation Provision**

- (a) Insert the provision at FAR 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation

- **FAR 6.302-1(c) - Application for brand name descriptions**

- An acquisition that uses a brand name description ... to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved.
- Brand-name or equal descriptions ... that permit prospective contractors to offer products other than those specifically referenced by brand name provide for full and open competition and do not require justifications and approvals to support their use.



Proposal Submittal and Evaluation

FAR 52.211-6 Brand Name or Equal

- (a) If an item in this solicitation is identified as “brand name or equal”, the purchase description reflects the characteristics and level of quality that will satisfy the Government’s needs. The ***salient*** physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.
- (b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must—
 - (1) Meet the ***salient*** physical, functional, or performance characteristic specified in this solicitation;
 - (2) Clearly identify the item by— (i) Brand name, if any; and (ii) Make or model number;
 - (3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
 - (4) Clearly describe any modification the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modification.
- (c) The Contracting Officer will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.
- (d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

- What are Salient Characteristics?
 - *Salient means: prominent, conspicuous, or striking*
 - *A “salient” feature or trait of an item*
 - *The “or equal part” of a BNE purchase description*
- Bandage procurement example

Baseline brand name




- Salient characteristics in the purchase description might specify the following firm requirements:
 - Flexible, sterile adhesive bandages
 - Safety center pads
 - Individually wrapped
 - Between 1" x 3" and ¾" x 3"



Brand Name or Equal Example

- A brand name or equal purchase description for bandages specifying the previous baseline brand name and salient characteristics would permit offers of the following products:





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